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IN THE CIRCUIT COURT OF HENRICO COUNTY.

CITY OF RICHMOND v. COUNTIES OF HENRICO AND CHESTERFIELD.

1. Municipal Corporations—Annexation Proceedings—Evidence—Sufficiency.—Evidence held sufficient to entitle the city of Richmond to enlarge its boundaries by annexation of adjoining territory.

2. Municipal Corporations—Annexation Proceedings—Wishes of Territory Annexed.—In annexation proceedings by a city to annex adjoining territory the wishes of the territory sought to be annexed should be largely considered and given due weight.

3. Municipal Corporations — Annexation Proceedings — Platted Tracts—Agricultural Lands.—As far as possible, the courts will avoid taking in agricultural lands except where it is necessary to do so to have the territory in compact form. Lands which have been platted into lots and put upon the market and so managed as not to be capable for use for agricultural purposes and lying in the direction in which a city's growth would be natural are properly included in annexation.

4. Municipal Corporations—Annexation Proceedings—Power of Court to Compel City to Pay County for Improvement of Public Road beyond Territory Annexed.—Though the courts are clothed with some legislative functions along with judicial functions by Act of Assembly of March 10, 1904, providing for annexation of adjoining territory by cities, they have not the power to compel a city to pay to the county money for the improvement and upkeep of its public roads beyond the territory annexed.

5. Municipal Corporations—Annexation Proceedings—Power of Cities to Make Payment to Counties.—A municipal corporation may voluntarily appropriate and pay to a county from whom it has acquired territory by annexation, money for the improvement and upkeep of its public roads.

6. Municipal Corporations—Annexation Proceedings—Assumption of School Debt.—Where there is no specific lien on school properties taken into the city by annexation, the city must compensate a county for the school buildings as well as assume its pro rata share of the school debt.

On petition in annexation proceedings.

Henry R. Pollard, City Attorney, and *George Wayne Anderson*, Assistant City Attorney, for the City of Richmond.

Frank T. Sutton, Jr., Commonwealth Attorney, *H. M. Smith, Jr.*, and *O'Flaherty, Fulton & Byrd*, for the County of Henrico.

Christopher B. Garnett and Roy E. Cabell, for Ginter Park.

George W. White, for Highland Park.

Cutchins & Cutchins, for North Richmond.

Thos. W. Gardner, for Barton Heights.

Haskins Hobson, Commonwealth Attorney for Chesterfield County.

C. V. Meredith, for "Forest Hill" and other Southside citizens.

Geo. J. Hooper, B. Rand Wellford, Lewis M. Williams, and *Allen G. Collins*, for sundry parties residing in proposed annexed territory.

OPINION.

A. A. CAMPBELL, JUDGE: In this case the court for more than three weeks has heard all of the evidence introduced by all of the parties to this controversy and has listened with a great deal of interest to the arguments of counsel, and is satisfied that by reason of the forceful presentation of the different interests that it has been greatly benefited in arriving at a decision in this case.

From the evidence adduced the court is satisfied that it is necessary that Richmond should be allowed to annex new territory. From the evidence and from a frequent inspection of the territory of Richmond during these proceedings the court is convinced that for all of the reasons assigned in the ordinances asking for annexation that annexation should be allowed, but the court from the physical inspection, is satisfied that Richmond will not need in the near future all of the territory asked for within the proposed limits. The court has considered this feature as carefully as it could, having a due regard to the loss to be sustained by the counties.

It is needless for the court to comment upon the situation in Chesterfield County, as both parties to the controversy are satisfied with the lines of annexation set forth in the decree.

THE SITUATION IN HENRICO COUNTY.

As to Henrico County, a different state of affairs exists. The attorneys for the County of Henrico have insisted from the beginning of this proceeding that Richmond's demands upon Henrico County are extravagant, and if I may be permitted to say so, the attorneys representing Henrico County have very ably presented their side of the case. The court is not able to agree with the city or the County of Henrico.

It is earnestly insisted by the county that Ginter Park, a beautiful suburb, should be allowed to remain in the county and that territory adjacent and contiguous thereto should also be excluded. The court believes that to a large extent the wish

of the territory annexed should be considered. As the court understands the position of Ginter Park and the surrounding territory, it does wish to become a portion of the city of Richmond. In the opinion of the court it is certainly expedient for the city of Richmond that this territory should be annexed.

It is seriously contended that sections, such as the land lying between Sherwood Park and Bellevue and Chantilly and Colonial Place, should not be annexed because they are virtually unbuilt upon and not needed, inasmuch as there is considerable vacant territory between these sections and the present city limits. A great deal of this territory has been sold off in town lots, virtually all of it has sidewalks and streets laid off and is, in its present condition, absolutely unfit for agricultural purposes. It is in a beautiful section, is in the direction in which the city's growth would be natural and is, as said above, unfit for other purposes than building.

In addition to the reasons set out in the ordinances, Mr. Dillon and 28th Cyc., both give as reasons for annexation the fact that property has been put upon the market in lots and has been so managed as not to be capable for use for agricultural purposes as a very potent reason why the same should be brought into the city.

In taking the lines set out in the decree the court has, as far as possible, avoided taking in any agricultural lands, except where it was necessary to do so to have the territory in compact form. Because of the fact that the revenues of Henrico County will be seriously affected, and particularly owing to the condition in which certain magisterial districts of the county would be left, the court has excluded all property which it does not deem necessary for the use of the city in the near future.

It is true that this annexation will take nearly one-half of the taxable values of the County of Henrico and will leave in a crippled condition at least two magisterial districts as at present constituted. It will also very seriously affect one school district as at present constituted. But under the lines of annexation as set forth in the decree, Henrico County will have a taxable value of something over \$14,000,000, and while the court regrets that so much of its taxable values had to be taken away from it, this still leaves the country perhaps the fifth wealthiest in the Commonwealth. The county is, of course, aware of the fact that by a proper proceeding it may change its magisterial and school districts, and thus relieve by this change the ill features above spoken of, should it see fit to do so.

Owing to the fact that there is this straightened condition, particularly of some magisterial districts and of one school

district, the court has very carefully considered the position advocated by the attorneys for the county, that within a certain specified period, in annual payments, the city should be required to contribute the sum of \$200,000 to be expended upon certain roads of the county beyond the annexed territory. The court is frank to say that if it thought it had the power to do so, it would make some provision of this sort, perhaps not to the extent asked for by the county, but after careful and mature consideration and a full examination of the law upon this point, the court has reluctantly come to the conclusion that it has no such power.

Prior to the Constitution of 1902 the Legislature had the power of passing special statutes for the enlargement of cities and towns. That the Legislature had this power was determined against the city of Richmond in 18 Gratt. 583. The Constitution of 1902 deemed it unwise for the Legislature to exercise this power any longer, and declared that the General Assembly shall provide by general laws for the extension and contraction of the corporate limits of cities and towns, and forbade any special acts for the purpose. (See Virginia Constitution, article 8, section 126). The Legislature, in pursuance of the Constitution of Virginia, by an act approved March 10, 1904, delegated this power to judges on the circuit courts. By this act the courts necessarily are clothed with some legislative functions, along with judicial functions, and in *Henrico County vs. City of Richmond*, 106 Virginia, it was strenuously contended that this law was unconstitutional for that reason.

Judge Harrison, in delivering his opinion in his case, says: "Under this constitutional provision it was impossible for the Legislature to specify by general law what amount of territory should be annexed, as the necessity of each case would vary according to the size, crowded condition and financial ability of the city asking for annexation. It was equally impracticable for the Legislature by general law to determine the terms and conditions by which such extension should be made. It therefore became a necessity that the Legislature should select and designate some agency to exercise a judgment on the facts of each case. The Legislature declared the Circuit Court judges of this State as the governmental agency for carrying out the provisions of the law."

Clearly from the whole of this opinion it must be conceded that the judge performs some legislative functions, and that necessarily this will be the case in properly determining the facts of each case, but the court does not think that it has any authority whatever to go beyond the clear intent of the act

approved March 10, 1904. After a careful reading of this act, considering all portions of the same and attempting to give full meaning to the act as a whole, this court is inclined to believe that the terms and conditions which it has a right to deal with in determining the question of annexation applies to terms and conditions between the city and annexed territory. I say "inclined to believe" because I am not fully convinced that this is the proper construction. The main reasons why the court is inclined to this position is that the provision made for the counties is expressly stated in the act, and nowhere is there any positive power given the court for applying this statement to the county, and further, the policy of the act does not seem to contemplate compensation for territory to the county.

Whenever the language in this act is used, giving the court power to determine what are fair and reasonable terms, it is used in connection with the annexed territory, but the court, in its judgment, is relieved from having to determine whether or not this act is comprehensive enough to give it power to compel the city to pay this sum upon the county roads. It seems that the weight of decisions is to the effect that the Legislature itself has no power to compel a city to expend money for any such purpose.

Judge Cooley, in his *Constitutional Limitations*, page 337, subdivision 3, says: "It is believed the Legislature has no power against the will of municipal corporation to compel it to contract debts for local purposes in which the State has no concern, or to assume obligations not within the ordinary functions of municipal government.

Such matters are to be disposed of in view of the interests of the corporators exclusively, and they have the same right to determine them for themselves, which the associates in private corporations have to determine for themselves which arise for their corporations. The State in such cases may remove restrictions and permit action, but it cannot compel it." Citing *Carlin vs. Saginaw*, 50 Michigan 17 (14 N. W. 6770), in which it was stated that the city cannot be compelled to erect a building for the county, but it may be permitted to do so if it so elects.

On page 341 Mr. Cooley says: "Those cases which hold it competent for the Legislature to give its consent to a municipal corporation engaging in works of public improvement outside its territorial limits or becoming a stockholder in a private corporation must be conceded on all hands to have gone to the very limit of constitutional power in this direction, and to hold that the Legislature may go even further and under this power control the taxation of political divisions and organizations of

the State, may compel them without the consent of their citizens to raise money for such, or any other unusual purposes, or to contract debts therefor seems to us to be introducing new principles into our system of local self-government not within the contemplation of the makers of the American Constitution. There are cases which hold the contrary view; that of *Thomas vs. Leland*, 24 Wend. 25.

A collection of cases is given in 48 *Lawyers' Reports Annotated* 465, where a distinction is drawn between a public use and a local use. The case under which this note is given is a case from Connecticut—*State of Connecticut vs. Samuel H. Williams*, treasurer, and is one in which the Legislature created a highway district that required certain towns within that highway district to pay the cost of erection of bridges across the Connecticut River, placing it upon the ground that these four towns upon whom the cost was placed were the beneficiaries of this bridge, and it was clearly to their interest to have it built. The Supreme Court of Connecticut upheld this act of the Legislature and it was taken to the Supreme Court of the United States, and there the Supreme Court of Connecticut was affirmed, basing their decision upon the fact that this was a highway district, and these cities a portion of this district, and it being in the nature of a public work, but on page 467 of this report, in an extensive note in which is discussed the power of the Legislature to impose burdens upon municipalities and from a careful examination of all of the authorities cited there, the weight of the decisions is clearly, in the court's judgment, to the effect that where a matter is one of local concern and not of general public welfare, that the Legislature goes beyond its power when it attempts to impose any such burden. The courts of New York and Pennsylvania do not restrict the power of the Legislature, but the true weight of authority is to the effect that this is the rule.

As an illustration, the courts have required a city to pay out of its treasury the salary of the stenographer in courts in the city having jurisdiction in cases of felony; it may impose upon the city the expense of renting and keeping a place for holding court and for the offices of clerk, sheriff and juries of the court; the Legislature may, in the exercise of its police power, impose upon counties and cities the support of paupers; the Legislature may impose upon towns the debt of school districts which have been abolished by a previous statute; the Legislature in changing boundaries of counties, towns or cities, or in annexing one to another, may provide how the property of former corporations and the burden of paying their debts shall

be distributed among them. These are all decided to involve matters of general, rather than local concern.

The courts have denied the power of a State Legislature to compel a municipal corporation to establish and pay for city parks; they have denied the right of the Legislature to compel a city to bear the whole expense of county buildings; a statute compelling a town or other municipal corporation to become a stockholder in a railroad or other corporation by exchanging its bonds for stock without consent, has been declared to be unconstitutional. All of these cases are taken from the note to this case referred to in 48 Lawyers Reports Annotated.

From a careful consideration of these cases the court has reluctantly come to the conclusion that such a request of the city as is asked for in this case would not be upheld. Passing by the question of the legality of compelling the city to expend this money as designated upon the roads, the city undoubtedly has the right to do so should it see fit, and when there is taken into consideration the fact that these roads leading into the city are feeders for the city, are very largely used by parties bringing produce to the city for sale there, the fact that the citizens of Richmond use these roads very largely for their pleasure and enjoyment, and the further fact that particularly Brookland District and Fairfield Districts will, for some years to come, and perhaps until they have a readjusting, be very much crippled by reason of the fact of the annexation of so great a part of their territory in value, the court thinks that the city would be only doing its duty should it, within the next four or five years, assist the county to the extent of at least \$100,000 in the upkeep of these roads outside of the annexed territory leading into the city.

It was earnestly insisted in argument that as the language of the act said that the county should be compensated for the school buildings and not that the county should be paid for the same, that then any portion of the school debt which the school district had to assume should be deducted from the value of the school buildings or else the district would be more than compensated.

Had there been a specific lien on the individual properties taken in for the purpose of erecting the properties and the line on upon these properties the court is of opinion that this contention would hold, but where the act clearly contemplates that a prorate proportion of the indebtedness of the county shall be borne by the city, and that in addition thereto it shall also pay for public school buildings, the court is of opinion that the contention of the city is not sound.

For instance, had there been a school debt and the city took

in no school buildings under this statute the court is clearly of the opinion that a pro rata proportion of this debt would have to be paid by the city. In other words, it is a debt of the district, and not upon the individual property alone. The court hesitated for awhile whether or not the school district debt was a debt of the county, but after consideration it is satisfied that this is such a debt as should be included.

In arriving at its view in regard to Ginter Park the court has taken into consideration the vast amount of improvement which has been done in Ginter Park and the contemplated improvement and the fact that it receives very little compensating benefit has brought the court to the opinion that it should have special provisions made for it in this proceeding.